

CHAPTER 2

EFFICIENCY OF THE NATIONAL WITNESS PROTECTION PROGRAM

Introduction

2.1 The principal purpose of the Committee's inquiry is to examine the NCA's arrangements for witness protection. Although the NCA has statutory authority under section 34 of the *National Crime Authority Act 1984* to set up its own witness protection facilities, it informed the Committee that:

... the Authority does not have sufficient resources to do so, except for short periods while other long term arrangements are made. It is consequently reliant on existing witness protection programs which have been established in Australia by a number of police services. In the past the NCA has used both AFP and State Police witness protection programs. However, the NCA's current policy is to use the AFP program.¹

2.2 The Committee was aware of this policy in framing its terms of reference, which refer specifically to the efficiency of the National Witness Protection Program (NWPP) administered by the Australian Federal Police (AFP). It should be noted that the NCA also submitted that its use of the AFP program is not necessarily exclusive. Where the NCA is in a joint operation with a single State police service, it may be more appropriate to use the State witness protection scheme if required. The Committee's inquiry has, however, concentrated on the operations of the NWPP with only passing reference to the operations of State programs.

2.3 In practice, the NCA and the AFP have a Memorandum of Understanding (MOU) which governs the NCA's use of the AFP program.² Under that MOU, any person wanting to be included in the program must be approved by the Commissioner of the AFP and those persons accepted into the program are required to sign an agreement setting out the terms and conditions of their participation in the program.³ The AFP advised the Committee that since its establishment the NCA has referred twenty-four of its witnesses to the AFP for assessment and possible inclusion in the NWPP. Seven of those applications were unsuccessful. Of the

1 Submission volume, p. 17

2 Australian Federal Police, submission volume, p. 12: The AFP and the NCA first entered into an MOU in 1985. Prior to the enactment of the *Witness Protection Act 1994*, a more detailed MOU was formulated and agreed to on 13 April 1995. On 3 February 1999, an updated MOU was entered into that addressed finances, applications for inclusion of a witness into the NWPP and cessation of protection and assistance. Attached to the MOU are a Schedule of Procedures for Financial Adjustment and an estimated Schedule of Agreed Costs.

3 National Crime Authority, submission volume, p. 17

seventeen successful applications, the time the witness remained on the NWPP ranged from one week to just over three years.⁴

The view of relevant law enforcement agencies

2.4 There was unanimity among those members of the law enforcement sector that participated in the inquiry that the program of witness protection in Australia is working effectively. A typical comment to the Committee in this respect was that of Mr David Llewellyn MHA, Tasmanian Minister for Police and Public Safety, in the following terms:

... those programs in existence throughout Australia, including that of the Australian Federal Police, are providing satisfactory services for those participants within the program as well as in providing services on behalf of the National Crime Authority.⁵

2.5 The NCA and the AFP, the two agencies most directly affected by the Committee's inquiry, also both expressed strong support for the current arrangements. The NCA submitted that:

The NCA has used and continues to use the witness protection schemes offered by a number of Australian police services. The NCA considers the AFP scheme is well run and efficient and is satisfied with the performance and professionalism of all those schemes that provide a service to the NCA.⁶

2.6 The AFP expressed the view that the codification of the witness protection arrangements in 1994 had been a positive step in enabling the AFP to assume an expanded national protection role.⁷ The codification followed the recognition that it was necessary for witnesses to be adequately protected to enable the giving of evidence that would assist the prosecution of major offenders in organised crime.⁸

2.7 Subsequent to the receipt of these comments by the Committee, the report of the independent inquiry into the Western Australian Witness Protection Program established following the death of protected witness Andrew Petrelis, which was tabled in the Western Australian Parliament on 9 August 2000, was critical of several aspects of its administration. Criticisms included inadequate staff selection and training, inadequate sharing of information, and inadequate staffing and budgets. Police Commissioner Barry Matthews reportedly established a working party to examine and implement the report's 41 recommendations.⁹

4 Australian Federal Police, submission volume, p. 13

5 Submission volume, p. 4. See also, Tasmania Police, submission volume, p. 6

6 Submission volume, p. 18

7 The Committee's 1988 report, *Witness Protection*, recommended that the AFP should assume such a role (see Appendix 3).

8 Evidence, p. 23 per Mr Heggie

9 *WA asks Qld govt to grant Petrelis inquest*, AAP, 9.8.2000

The view of the Commonwealth Ombudsman

2.8 The Commonwealth Ombudsman, Mr Ron McLeod, similarly expressed support for the current arrangements. The Commonwealth Ombudsman has jurisdiction over the investigation of complaints made against actions of the AFP under the *Complaints (Australian Federal Police) Act 1981*, which includes the actions of AFP officers administering the NWPP. Mr McLeod expressed his support for witness protection programs in the following terms:

In my view, the proper administration of law enforcement requires a Program of the kind established by the Act. The cooperation of people with detailed information about criminal activity is undeniably part of the means to fight crime.¹⁰

before adding that:

We have an insight into the management of the program but only through the actual complaints that are lodged with us. While we have built up over time some understanding and knowledge of the administrative arrangements, we could not claim to have full knowledge of the program or of its administration in the broad. But we have had some insight into it through the investigation of the occasional complaints that we get. In the course of looking at those complaints – with that qualification I have just mentioned – we have not discerned any significant concerns with the way the program is managed. It seems to us that it has generally been an effectively managed program.¹¹

2.9 Mr McLeod told the Committee that the bulk of the complaints had been concerned with the adequacy of compensation payments made to NWPP participants or arose out of personal relationships. These issues are addressed in detail elsewhere in this report.

Compared to witness protection overseas

2.10 Comparisons were drawn between the NWPP and witness protection programs overseas, which were favourable to the NWPP. The NCA's General Manager Operations, Mr Peter Lamb stated:

I have been fortunate to see Witness Protection Programs in the USA, Northern Ireland and places like that, and let me say that the federal Witness Protection Program and, indeed, the others [the State programs] are second to none.¹²

2.11 The success of the NWPP was partly attributed to the fact that the NWPP and those in the States and Territories are much smaller than the overseas programs and therefore easier to manage. To date, organised crime and terrorism have not penetrated Australian organisations to the level that perhaps they have in other countries.¹³ Further, witness protection programs were developed in Australia with the benefit of hindsight from the

10 Commonwealth Ombudsman, submission volume, p. 28

11 Evidence, p. 17

12 Evidence, pp. 4-5

13 Evidence, p. 5 per Mr Lamb

experiences of overseas jurisdictions. The Australian experience in witness protection has therefore not had to be ground-breaking:

They have taken the good things from other systems and, from my point of view, they have advanced those to a level that is probably second to none.¹⁴

2.12 The introduction of legislative witness protection programs continues around the world, with its recent introduction in places as diverse as Hong Kong, Brazil, South Africa and Zambia.

2.13 Italy has one of the more substantial witness protection programs, with an estimated membership of some 1100 'pentiti'; former mafia members who have agreed to cooperate with investigators in return for judicial leniency. The Italian parliament is understood to be examining the rules for the use of 'pentiti' evidence by magistrates, because of concerns about their reliability.¹⁵ The Committee was assured that, in contrast to Italy, the Australian experience has been that witnesses have delivered on their commitments and there has been no occasions of false evidence or backdowns from commitments by witnesses in the program:

Some perform better than others, and as times get closer to their appearance in courts they become a little bit more agitated and more concerned. But, at the same time, I know of no appearance where that has happened.¹⁶

Further:

The Italians went from ground zero with nothing - with no witness protection, with no capacity to offer indemnities even. They went from ground zero to that in about nine years, so you can see that with the ability to provide indemnities and to provide protection they were able, once and for all, to get a pretty good feel for the way that the Mafia and the n'dragheta and the Camorra operated. They were pushed very strongly into that position by the Americans and the results have been nothing short of outstanding.¹⁷

2.14 One related aspect of arrangements under the Commonwealth's Witness Protection Act is that, although the NWPP has no overseas jurisdiction, the AFP is able to provide protection of witnesses from overseas within Australia. Those instances arise from a government-to-government process.¹⁸ Similarly, were it necessary to relocate an Australian witness overseas, it would be a matter for government-to-government request and agreement.¹⁹

14 Evidence, p. 5 per Mr Lamb

15 *After acquittal, Andreotti awaits second judgement*, Reuters, 27.9.99

16 Evidence, p. 6 per Mr Lamb

17 Evidence, p. 7 per Mr Lamb

18 Evidence, p. 29 per Mr Heggie

19 Evidence, p. 35 per Mr Heggie

Practical operation of the NWPP

2.15 In this section of the report, the Committee will describe the evidence it received about the detailed operations of the NWPP in practice.

Background of witnesses

2.16 Mr Lamb told the Committee that, based on his 40 years experience in policing:

The majority of people that enter the Witness Protection Program ... are primarily criminals. They are usually criminals of some standing, albeit not principals, of course, but they are people from the criminal milieu. In a majority of cases I would suggest that they would be people who are career criminals and who have positioned themselves somewhere about the middle level of the criminal structures. Very few people in any program are innocent bystanders.²⁰

He described their motivation for joining the program in the following terms:

Most of the people that go into the Witness Protection Programs are not doing so because they are providing information in the interests of the community. They are, in the main, people who find themselves caught, literally, and who are in a position to give evidence about the principals or the conduct of other people who hold a more senior position in the criminal world.²¹

Admission of a witness to the NWPP

2.17 The submission of the Australian Federal Police gave a detailed account of the process by which witnesses are placed on the NWPPP. Although seeking placement in the program is a voluntary decision of the potential witness, the AFP Commissioner has the sole responsibility for deciding whether a witness is accepted.

2.18 When agencies such as the NCA make application for assessment of a person for inclusion in the program, they must complete a witness profile that serves as a basis for the assessment. A comprehensive report, including a threat assessment and a description of the circumstances that give rise to the threat, is required. The Director, Witness Protection then conducts a comprehensive assessment of the witness, including a taped interview of the potential witness and possibly of the investigating officers and others. The Director's report is referred to the Witness Protection Committee, which considers and makes recommendations on the application. One of the members of the committee is the Deputy Commissioner, who has the delegated power of the Commissioner.

2.19 The Act specifies the criteria which the Commissioner must consider before deciding whether to include a witness on the program. This aspect of the process is considered in detail in Chapter 3. Acting Director of Witness Protection for the AFP, Mr McGeachie, also told the Committee that when a participant is interviewed and assessed for consideration by the Witness Protection Committee, part of that process is being interviewed by the Australian Taxation Office. This issue is addressed in Chapter 4.

20 Evidence, p. 2

21 Evidence, p.2

2.20 Mr Lamb told the Committee that, from the NCA's perspective, the assessment has to be very cautiously made by all involved and that is not only the officers making an assessment:

In the context of the NCA, it comes right up through the system to me and then to the Authority members themselves. But, at all times, the investigation teams are conferring with DPP and they are certainly in the loop. They are part of the judgment process, and indeed they have to carry forward the indemnification process if we are going down that road. So there is a whole range of other people involved who have to make judgments about whether it is appropriate for this person to go in or whether it is even worthy to consider this person for that sort of a process.²²

2.21 Mr Lamb stressed that potential protected witnesses would normally be identified by the NCA in the course of the initial formal interview of a person involved in an investigation of criminal activity. The prospect of protection cannot be advanced at that stage by the investigating officer because that would be capable of being seen as an inducement. The Act specifically excludes the inclusion of a witness in the NWPP as a reward or as a means of persuading or encouraging the witness to give evidence.²³ However, if the investigating officer is of the view that the witness may be capable of giving viable evidence supportive to the prosecution:

We would tell them [the AFP or the State police] after our deliberations whether we deemed it appropriate or whether we thought that the evidence was sufficient to warrant it—there is a whole range of things—as I said, with DPPs and internally. We would say to them that we are of the view that they should be afforded the opportunity to go into the Witness Protection Program.²⁴

2.22 Mr Lamb noted that, in making those judgments, there is always an element of risk:

... most of these people are career criminals. ... A lot of them have had lifestyles that cannot be provided by way of the Witness Protection Program and they come from milieus that they feel more comfortable with than where they are going to, so there are all those things impacting on them at that time. But we, in a general sense, say to them, 'Your whole life is going to change. Indeed if you want to stay in the program you are going to have to change.'²⁵

... It is a very fine balancing act, and it all has to be done in a very constrained legal environment. The offering of inducements, the development of indemnities—all of that has to be done in a very considered and transparent fashion. All of those things in this day and age are discoverable by the courts. So it is not just a balancing act; everything has to be done in a very considered and step-by-step process... If we have selected them right at the outset, if we have gone for the right targets to turn, then nine times out of 10 they are more frightened of other people

22 Evidence, p. 12

23 *Witness Protection Act 1994*, section 5

24 Evidence, p. 14 per Mr Lamb

25 Evidence, pp. 10-11

than they are of us. If they turn and want to live a secure life in the future and get on with their life, then they are more inclined to play the game.²⁶

2.23 In summary, Mr Lamb stressed:

... these people are criminals. They are career criminals, most of them of some standing in the criminal milieu. Some have been very violent criminals; some have been very successful, international criminals. So, yes, it is a true balancing act.²⁷

2.24 Although the arrangements for selection of witnesses for inclusion in the NWPP are administered by the AFP, and the AFP indicated to the Committee in its submission that referrals of seven potential witnesses from the NCA for inclusion in the NWPP had been rejected, Mr Lamb said that he knew of no instance where a witness selected by the NCA and identified as being central to their case, had been denied access to the NWPP:

I must say, where we have said that it is absolutely essential to our case, I know of no occurrence where that person has been denied access to the program.²⁸

Financial considerations

2.25 Witness protection can be extremely expensive and manpower intensive. Many witnesses are under serious threat or danger of threat. This means around the clock protection by a rotating team usually with three or four officers present at the same time. Elaborate arrangements have to be made whenever the witness is moved and great care has to be taken in the selection of accommodation.

2.26 When making judgments about whether it is appropriate to put somebody into the NWPP, consideration is given to the cost of providing that protection. Mr Lamb said that the NCA only considered putting people into witness protection in the most serious of cases because it is a labour intensive and costly function and its costs must be met from the NCA's general budget.²⁹

Levels of security

2.27 Mr Lamb was asked whether security levels change in relation to the degree of importance of the witness. He replied in the following terms:

... the AFP are probably in a far better position to answer that question than I am but, from my own point of view, there have been occurrences where people have gone in at one level and been elevated to another level because of what we have learnt in the meantime by virtue of the investigations. The security levels are dependent upon the level of threat that is determined. All of those things are taken

26 Evidence, p. 11

27 Evidence, p. 12

28 Evidence, p. 3

29 Evidence, p. 12

into account by the Australian Federal Police. They have criteria, they have a procedure and they have a practice that they employ.³⁰

Staffing

2.28 The NWPP is run by AFP members and staff members who hold or occupy 'designated positions', that is positions which have national security clearance or positions of trust clearance at the level of highly protected. The appointment of officers to staff the NWPP is a formal process that involves the gazettal and advertising of positions followed by a selection process to ensure that 'the best people are selected'.³¹ Importantly, therefore, only officers interested in working in the field choose to be part of the selection process. Officers have to be aware that they may be away from their home and family for some time and their willingness to travel is taken into account during the selection process.

2.29 Selected officers are dedicated to that task for a period of up to four years, subject to their normal career opportunities for promotion and the like.³² They are centrally located in Canberra although the actual protection may take place anywhere in Australia. A designated team will generally look after a particular witness, so that the witness develops a level of confidence in the people they are dealing with. The officers will temporarily relocate with the witness, but would not normally reside with them.

2.30 All members of the AFP's witness protection unit have to complete a close personal protection officer's course of five weeks duration. There is also specific witness protection training. Members of the unit have to undertake psychological assessment in relation to their emotional and psychological suitability prior to taking up their duties in the witness protection area. Also, they are required annually to re-certify on various parts of the close protection course.³³

2.31 The NCA's submission noted that it is well documented that persons in a closely protected situation develop relationships with their protectors: 'sometimes a friendship, sometimes of hate'. It is also well recognised that those providing protection are prone to succumb to what is described as the 'Stockholm Syndrome' which leads them to irrationally side with every grievance of the protected witness.³⁴

2.32 Acting General Manager of Protective Security for the AFP, Mr Robert Heggie, told the Committee that:

We have no record in nine years of instances of members who we feel have succumbed to this syndrome. In fact, the short periods of close protection that witnesses are given are interspersed with long periods where there may be no

30 Evidence, p. 4

31 Evidence, p. 29 per Mr McGeachie

32 *ibid.*

33 Evidence, p. 22 per Mr Heggie

34 Submission volume, p. 16

contact between a participant and members of witness protection, so we do not feel there is a long time together where these things can develop.³⁵

2.33 While the AFP has utilised officers who have been in the area and who may know the particular witness or have had previous dealings with them, it does not otherwise have a pool of people on call for witness protection for security reasons.

2.34 The submission of the Commonwealth Ombudsman had noted that there had been one complaint that was substantiated which led to AFP officers being counselled about their relationship with a witness. Senior Assistant Ombudsman Mr Philip Moss was able to confirm for the Committee that the incident preceded the introduction of the legislative scheme.

2.35 Mr McLeod described his experiences as a former Inspector General of Intelligence and Security of a similar program operated by ASIO:

... I have had some involvement in that jurisdiction which emphasised ... the critical importance of ensuring at the outset that when these arrangements are set up, the nature of the responsibilities and the obligations between the carer, the police force, on the one hand and the member of the program on the other, are very carefully defined and understood. Because of the circumstance ... where people are living in very close association with each other, there is a natural tendency for the carers to be drawn into the personal lives and the management of the personal circumstances of the member of the program... The people involved in the management of these programs do need to be always mindful that their responsibilities are essentially to care for the protection and the security of these people, not to be responsible for managing their personal lives. That is a difficult task and it is often the source of some of the conflicts and difficulties that do arise in these arrangements. Ultimately, these people still have personal lives to live and personal issues that they need to address. I think there does need to always be a clear understanding that there is a distinction between the official obligations of the carers towards these people and those matters that should properly not be interfered with and left to the individuals themselves.³⁶

2.36 In summary Mr McLeod noted that:

I think with the AFP, because of the nature of the program, with it being very closely protected even within the AFP itself, you do need to have very dedicated and committed people who are familiar with the challenge that they have to manage. It raises a whole range of issues that are quite distinct from the normal experiences that many police officers would normally be exposed to.³⁷

Differences in State and Territory legislation

2.37 As outlined in Chapter 1, not all States and the Territories have legislation which is necessarily complementary to the Commonwealth's. Tasmania until very recently and the Northern Territory, for example, have not had formal witness protection programs and some

35 Evidence, pp. 22-23

36 Evidence, p. 19

37 *ibid.*

of the States, such as Victoria, have a different statutory basis.³⁸ The Committee was informed by the AFP that the national program did not require complementary legislation in the States or Territories for it to operate.³⁹

2.38 Mr Lamb told the Committee, in answer to a question about whether this situation caused the NCA operational difficulties:

No, it does not. It is similar to all the other different circumstances that the NCA has to work in. The NCA is a national agency, it has the capacity and the legislative base to be a multi-jurisdictional type agency. A lot of the work we do is with partner agencies and, therefore, if it was in conjunction with the Victoria Police, for instance, and we were looking at matters that were contrary to Victorian legislation, then we would probably use the Victorian program. The Victorian part of the task force that is working with us would be the ones that would be instrumental in developing the path for the individual to go into the program.⁴⁰

2.39 The AFP confirmed that the question as to which program a particular witness is placed on is a matter determined by the investigators involved in each case.⁴¹ The AFP generally does not work with state or territory jurisdictions and nor do the States involve the AFP when managing programs in their own jurisdictions. Where a NWPP program is being managed within a particular jurisdiction the AFP maintains regular contact with relevant local police personnel, however. The AFP does not run programs for any states or the Northern Territory.

2.40 The general issue of the reputation, and hence integrity, of witness protection programs in Australia was raised, based on the revelation that in the Petrelis case in Western Australia a protected witness's new identity was able to be found by police officers accessing the police database system who, it is alleged, improperly passed on those details. The concern was that if the integrity of any one Australian witness protection program was undermined, it would reflect adversely on the integrity of all such programs, including the Commonwealth scheme. Naturally, potential witnesses considering going into a witness protection program would require fairly emphatic assurances as to their security and they may not make fine distinctions between 'good' and 'less good' programs.

2.41 Mr Heggie confirmed:

If the program does not have integrity, it is not really a Witness Protection Program.⁴²

Mr Heggie acknowledged that there may be some potential damage to the integrity of the NWPP by problems in the States but he was prepared to 'stand by the integrity of our program'. Mr Heggie noted it was not the role of the AFP to counsel those officials involved

38 This issue is discussed in detail in Chapter 3.

39 Evidence, p. 23 per Mr Heggie

40 Evidence, p. 13

41 Evidence, p. 23 per Mr Heggie

42 Evidence, p. 30

in other programs in relation to their conduct, although conferences are held from time to time to discuss 'different things' but never operational matters involving witnesses.⁴³

Accountability

2.42 In relation to witness protection programs, there is considerable tension between notions of confidentiality and the need for transparency and accountability in public administration. The Parliament has recognised that tension by requiring the Commissioner to keep the Minister informed of the general operations, performance and effectiveness of the NWPP and for the tabling of an annual report on the operations of the Act, but without prejudicing the effectiveness or security of the NWPP.

2.43 The Commonwealth Ombudsman, who plays an important role in the NWPP's accountability process as the primary independent arbiter of the manner in which the program is being administered, agreed that the objective of confidentiality is paramount in a witness protection program. Mr McLeod told the Committee:

Ultimately, I think these issues involve a careful judgment about balance. The whole purpose of setting up a program of this kind, which is extremely expensive to set up and administer, is to provide safety, security and a proper sense of protection to people who have put themselves at risk in the interests of assisting the course of justice. If the program is to be effective, I think that objective has got to be seen to be paramount. Having said that, I think the program does involve the potential for a significant invasion by officialdom into the private lives of citizens. It can involve participants in the program having to accept considerably restrained normal rights that we all enjoy.⁴⁴

2.44 Mr McLeod said that in a contemporary environment you do need to have appropriate accountability mechanisms to ensure that people in the program are properly protected. There needs to be proper accounting for the way in which police officers or officials perform their responsibilities, because in a program of this kind they have extended powers over individuals:

To be able to do that, I think involves a widening of the net, to some degree, of the people who have got a genuine need to know about the circumstances of people placed in the program. For example, an office like mine has a need to know, and I think that is appropriate. But, at the same time, the wider you open the net, the greater are the potential risks that the program is going to be compromised.⁴⁵

2.45 As noted above, in the Petrelis case the witness's new identity was compromised by officers accessing the general police computer system. Mr Heggie told the Committee that he was unaware of any instances where members of the AFP or any Commonwealth agency had leaked any information relating to the NWPP. He added that there had been cases of people

43 Evidence, p. 30 per Mr McGeachie

44 Evidence, p. 20

45 Evidence, p. 20

being charged under section 22 of the Act for unlawful disclosure but they were not officials involved in the administration of the program.⁴⁶

2.46 One of the recommendations of the recent inquiry into Western Australia's witness protection program was that one of the officers alleged to have accessed Andrew Petrelis's details on the police computer system should be investigated and, if possible, charged as a matter of priority.⁴⁷ While the Committee did not take evidence in this respect, it would expect that any similar incident in relation to the operations of the NWPP should be referred immediately to an appropriate investigatory area within the AFP.

2.47 Mr McLeod's view was that the statutory law can play an important part in placing limitations on the actions of people who do have access to information about the NWPP. In relation to his officers, for example, their access is controlled by legislative prescription, which he supports as entirely appropriate. He noted that there had been no complaints from participants in the NWPP about their dealings with officers of the Australian Taxation Office, a concern which had been referred to in the Victorian Government's submission.

2.48 He added that:

Again, it gets back to knowledge in the community about the role of my office. But any member of the community, whether they are on the Witness Protection Program or not, has got full access to my office if they have concerns about their treatment by members of the Australian Taxation Office. We deal with many complaints about the Taxation Office because it is a big office that affects us all, touches us all. I think that is just another example of how there needs to be a balance between rights and protections on the one hand and issues of proper public accountability on the other.⁴⁸

2.49 In relation to complaints about the NWPP, Mr McLeod wrote in his submission that:

Our records indicate that prior to the commencement of the Act, my Office received a small number of complaints about the management of protected persons by the AFP. Several complaints have been made since the Act came into operation. The latter complaints have concerned domestic issues arising between complainants and their partners or former partners who are participants in the Program, or the adequacy or lack of compensation payments made to participants in the Program. One of these complaints was substantiated in that AFP officers were counselled about their relationship with the witness and about discussing the complaint with the complainant. A more serious allegation in the same complaint that AFP officers assisted the Program participant to avoid criminal prosecution was not substantiated.

Another complaint concerned the removal of a participant from the Program. In that matter, the complainant who had had a long period as a participant in the Program sought a review of the terms of the resettlement package. The complaint did not require a remedy.

46 Evidence, p. 30

47 *West Australian*, 10 August 2000

48 Evidence, p. 20

None of the complaints received by my Office since the commencement of the Act concerns a refusal to accept a person under the Program or the proper administration of payments made to participants in the Program.⁴⁹

2.50 The AFP has agreed with Mr McLeod's Office that any Memorandum of Understanding between a participant in the Program and the AFP will include a clause which acknowledges the participant's right to make a complaint to the Ombudsman if the participant is not satisfied with any aspect of his or her treatment under the Program. Mr McLeod noted in discussion with the Committee that:

We have not had any complaints from people who have been rejected for inclusion in the program. But I would have to say in that respect that I would not be confident that people who might have been rejected for inclusion in the program would necessarily have a full understanding that they would have the right of complaint to my office if they were concerned about the decision. While the members who are part of the program provide advice, as part of the guidelines that the Australian Federal Police use to administer the program, to the participants, that my office exists as an external source for the lodgment of complaints that might occur about conditions while they are on the program, there is not the same type of information—to us at least—that is readily available to people who might be interacting on the fringes of the program but not as part of it. Perhaps if there is a concern there—and your inquiry has served to remind us of that—I think we should be reminding both the National Crime Authority and the Australian Federal Police that if they are dealing with people who are seeking access to the program and who are denied that opportunity, there would be some advantage in those two organisations as a matter of course advising the people concerned that, if they have any concerns with that decision, they do have recourse to my office.⁵⁰

The need to know

2.51 As cited above, Mr McLeod noted that his officers are subject to a legislative regime in relation to their access to NWPP information. Naturally, if witness protection is to succeed, and a protected witness is to successfully reintegrate into the community after completing their obligations, their new identity must not become public knowledge. A simple listing of some of the more obvious tasks involved in changing the identity of a family is illustrative of the extent of the potential for problems in this respect. At the Federal level: Tax File Numbers, passports, Medicare, and Centrelink. At the State level: births, deaths and marriages certificates, house title, car registration, driving licences, school and other qualifications. Local government has rates accounts. Non-government agencies may include bank accounts, stocks and shares, clubs and professional associations and motoring organisations.

2.52 Speaking from the perspective of the AFP, Mr McGeachie stressed that:

Nobody would know the new identity other than those people on a need to know basis. ... It would only be those immediate people within the witness protection

49 Submission volume, p. 28

50 Evidence, p. 17

area that would know. ... Mr Heggie, as the acting general manager, does not know where the witnesses are.⁵¹

2.53 In relation to the risks from a large number of people in the community knowing of the change of identity, and the quality of their records, Mr Heggie added:

Mainly in the creation of new identities is where other agencies may become involved. It is only very particular parts of those agencies that the AFP deals with and has been dealing with since before the inception of the act. We have not had any problems in that area.⁵²

He noted that where there had been a security breach it was generally committed by the witness.

Summary

2.54 This analysis suggests that the NCA's policy of using the NWPP to provide its witness protection requirements is justified. The Committee received no adverse comment about the Program's operations. It therefore makes the finding that, on the basis of the material available to it during this inquiry, the administration of the NWPP is sound and is a credit to all who are involved in its processes.

2.55 The introduction of the legislative scheme in 1994 seems to have led to a desirable and proper level of certainty in the administration of the NWPP. The clear requirement for participants to enter into a memorandum of understanding with the Program's administrators would appear to ensure that there are no grounds for confusion on either side. The Committee notes that this was one of the contentions in the Sommerville case, which of course had commenced prior to the introduction of legislation. While not suggesting that the administrators of their program may not have adequately explained to the Sommers the terms and conditions of their protection, it appears that any such problems should no longer occur.

2.56 The importance of the role of the Commonwealth Ombudsman cannot be overstated. As stated in Mr McLeod's submission:

... my Office fills the gap by providing Program participants with a lawful avenue to pursue complaints that respects the special issues of privacy they face and which is able to apply its influence and persuasive powers to government agencies. Also, my Office has developed a sensitivity to the special demands of law enforcement which enables it to bring a proper balance to its dealings with these cases.⁵³

2.57 The Committee's discussions with Mr McLeod noted that unsuccessful applicants for the NWPP may not be fully aware of their rights to raise concerns with the Ombudsman's Office. The Committee would imagine that persons who are seeking to enter the program but who are rejected may feel some considerable anguish at that decision. This is only a small

51 Evidence, p. 27

52 Evidence, p. 31

53 Submission volume, p. 29

flaw in the operations of the Program and the Committee is reassured that Mr McLeod gave an undertaking that he would seek to address the situation.

2.58 The effectiveness of witness protection in Australia is particularly dependent on close cooperation between law enforcement agencies and authorities at all three tiers of government. Notwithstanding that at present there are no particular problems identified that adversely impact on the AFP's witness protection program, the Committee urges the maximum cooperation with the AFP by relevant authorities in assisting them to secure, for instance, necessary documentation to validate a program participant's new identity.